

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**NICKOLAS TSUI, on behalf of himself and  
others similarly situated,**

**Plaintiff,**

**v.**

**WALMART INC.,**

**Defendant.**

**No. 1:20-cv-12309**

**JOINT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND EXPECTED  
DATE OF FILING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL**

Plaintiff Nickolas Tsui (“Plaintiff”) and Walmart Inc. (“Walmart”) (collectively “the Parties”) hereby submit this Notice to advise the Court that they have reached a proposed settlement of the class claims that Plaintiff alleges on behalf of thousands of military reservists who took short-term leave from their employment with Walmart between 2004 and 2020, and to inform the Court that Plaintiff will file his Motion for Preliminary Approval and Certification of a Settlement Class by January 15, 2021. The Parties state as follows:

1. The Complaint alleges that Walmart violated the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4316(b) by failing to provide fully paid leave to employees who took short-term military leave from October 2004 through the present, while providing fully paid leave to employees who took other short-term leaves, such as jury duty and bereavement leave, that Plaintiff alleges are comparable to short-term military leave. *See* ECF No. 1 ¶¶ 1-5, 46-53. Pursuant to Rule 23(a) and (b)(3), Plaintiff seeks to represent a class of thousands of similarly situated current and former employees of Walmart who took short-term military leave (i.e., periods of 30 days or fewer) from Walmart since October 2004 and did not receive fully paid leave during such periods, and seeks to obtain

compensation for the proposed class members. *Id.* ¶¶ 11-31. Walmart denies the claims alleged in the Complaint.

2. On December 31, 2020, the Parties executed a Class Action Settlement Agreement, which is attached as Exhibit 1 to this Notice and briefly described below.

3. The Settlement is a product of arm's length negotiations over a lengthy period of time. In March 2019, Plaintiff's counsel approached Walmart about Plaintiff's class claims, and from March 2019 through December 2020, the parties exchanged information about the claims of the proposed Settlement Class Members and Walmart's potential liability and engaged in extensive negotiations, including with the assistance of an experienced mediator.

4. Under the proposed Class Action Settlement, Walmart will pay a minimum of \$10 million and a maximum of \$14 million to settle the proposed Settlement Class Members' claims, depending on the number of timely Claim Forms approved by the Claims Administrator. Each Settlement Class Member who submits a timely Claim Form will receive an equal pro rata share of the Net Class Settlement Amount based upon the number of years the person took Short-Term Military Leave from Walmart since October 2004 ("Year of Military Leave"). For each Year of Military Leave approved by the Claims Administrator, a Settlement Class Member will receive \$1,200, less the fees, costs, and service award approved by the Court and applicable taxes, though this figure could increase or decrease depending on the number of timely approved claims.

5. The parties have identified more than 7,000 potential Settlement Class Members in Walmart's employment data who would be eligible to receive a payment under the terms of the proposed Settlement. There are additional Settlement Class Members for whom Walmart

does not have records. All Settlement Class Members will have an opportunity to submit a Claim Form whether or not Walmart has records of them taking Short-Term Military Leave.

6. As part of the Settlement, Walmart will enhance its military leave of absence policy, which will benefit thousands of Class Members and other reservists who are hired by Walmart in the future. Walmart's new policy—which will be implemented on January 1, 2021, will provide fully paid leave for eligible employees who take up to 30 days of military leave per calendar year, and when eligible employees take more than 30 days of leave in a calendar year they will receive differential pay for the additional days of military leave (*i.e.*, the difference between their Walmart pay and their military pay, if their Walmart pay is greater than their military pay) for up to twelve months.

7. The Parties are currently gathering information pertinent to the administration of the proposed Settlement, receiving bids from potential Claims Administrators, and finalizing the proposed notice plan to present for the Court's approval in conjunction with Plaintiff's Motion for Preliminary Approval.

8. Plaintiff intends to file an unopposed motion seeking preliminary approval of the proposed settlement agreement and certification of a settlement class on or before January 15, 2021. The Parties counsel are available prior to January 15, 2021 should the Court have any questions regarding the foregoing.

DATED: December 31, 2020

Respectfully submitted,

/s/ Terry McCourt  
Terry McCourt  
GREENBERG TRAURIG, LLP  
One International Place  
Suite 2000  
Boston, MA 02110  
Tel: (617) 310-6246  
Email: mccourt@gtlaw.com

/s/ Nathaniel Silver  
Nathaniel Silver  
BLOCK & LEVITON LLP  
260 Franklin Street, Suite 1860  
Boston, MA 02110  
Tel: (617) 398-5600  
Email: nate@blockleviton.com

Naomi G. Beer\*  
GREENBERG TRAURIG, LLP  
1144 15th Street, Suite 3300  
Denver, CO 80202  
Tel: (303) 572-6549  
Email: beern@gtlaw.com

*Attorneys for Defendant*

R. Joseph Barton\*  
BLOCK & LEVITON LLP  
1735 20th Street NW  
Washington, DC 20009  
Tel: (202) 734-7046  
Email: joe@blockleviton.com

Peter Romer-Friedman\*  
GUPTA WESSLER PLLC  
1900 L St. NW, Suite 312  
Washington, DC 20036  
Tel: (202) 888-1741  
Email: peter@guptawessler.com

Adam T. Klein\*  
OUTTEN & GOLDEN LLP  
685 Third Ave., 25th Floor  
New York, NY 10017  
Tel: (212) 245-1000  
Email: atk@outtengolden.com

Matthew Z. Crotty\*  
CROTTY & SON LAW FIRM, PLLC  
905 W. Riverside Ave., Suite 404  
Spokane, WA 99201  
Tel: (509) 850-7011  
Email: matt@crottyandson.com

Thomas G. Jarrard\*  
LAW OFFICE OF THOMAS G.  
JARRARD LLC  
1020 N. Washington St.  
Spokane, WA 99201  
Tel: (425) 239-7290  
Fax: (509) 326-2932  
Email: Tjarrard@att.net

\* *pro hac vice* motion forthcoming

*Attorneys for Plaintiff and the Proposed Class*

**Certificate of Service**

I hereby certify that this document was filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 31, 2020.

/s/ Nathaniel Silver  
Nathaniel Silver